

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

CWP No. 624 of 2006.

Date of Decision: October 12 , 2007.

M/s Continental Foundation Joint Venture Petitioner.

Versus

State of Himachal Pradesh and others Respondents.

Coram

The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.
The Hon'ble Mr. Justice Rajiv Sharma , Judge.

Whether approved for reporting?¹

For the Petitioner: Mr.Bimal Gupta, Advocate.

For the Respondents: Mr. M.S. Chandel, Advocate General with Mr. J.K. Verma, Dy.
Advocate General for respondents No. 1 &2.

Mr. Ramakant Sharma, Advocate, for respondent No.3.
Mr. Y.P.S. Dhaulta, Advocate, for the intervener.

V.K. Gupta, C. J. :

In this Petition filed under Article 226 of the Constitution of India,
the petitioner has assailed and challenged the legality and correctness of
notice No. Udyog-Bhu (khani-4) Laghu-132/02-2398 dated 16th June,
2006 issued by the Director of Industries, Government of Himachal

¹ Whether Reporters of Local Papers may be allowed to see the judgment?

Pradesh, respondent No.2 herein whereby a decision has been communicated by respondent No.2 to the petitioner that the extracted minor minerals, namely, aggregate and sand forming the subject matter of this Petition have become the property of the Government in terms of Himachal Pradesh Minor Minerals (Concession) Revised Rules, 1971 (for short: 1971 Rules) and therefore, the Government is at liberty to sell or dispose of the said minor minerals in such manner as it deems fit without the liability to pay any compensation in lieu thereof to the petitioner. The basis on which such a decision has been arrived at in the aforesaid impugned notice is that under the provisions of the aforesaid 1971 Rules the lessee, that is the petitioner herein on termination or sooner determination of the lease was bound to remove all extracted minor minerals from the premises of the leased area and because he had failed to do so, all extracted minor minerals left over undisposed had become the property of the State Government.

The contention of the petitioner in this Petition is that it had entered into a contract agreement with respondent No.3 for construction of works and clearance had been obtained with respect to rock quarry at some places such as Pachhada, Kotla and river bed materials of Tapri (Choling). Respondent No.2 had addressed a letter on 20th July, 1992 to the Chief Engineer, NJPC, Jhakri whereby minor mineral quarries at Pachhada, Kotla and Tapri on terms and conditions mentioned in the said letter were reserved for respondent No.3. In para 12 of the Writ Petition the petitioner itself admits that the aforesaid letter dated 20th July, 1992 provided that the extraction of minor minerals had to be carried out in accordance with the aforesaid 1971 Rules.

Rival contentions have been set up before us by the petitioner on the one hand and respondents No. 1 and 2 on the other. Whereas the petitioner claims that the sand and aggregate which now is lying left over is the property of the petitioner, relying upon the aforesaid 1971 Rules respondents No.1 and 2 claim that this has become the property of the State. The petitioner's claim to ownership is linked with and based upon the alleged existence of certain agreements entered into between the petitioner and respondent No.3 which is being denied by respondent Nos. 1 and 2.

After hearing the detailed arguments of the learned counsel for the parties, we find that certain disputed questions of fact have arisen in this Petition which cannot conveniently as well as efficaciously be dealt with, adjudicated upon and disposed of in this Petition by this Court exercising this Court's extraordinary jurisdiction under Article 226 of the Constitution of India. We feel that because of the aforesaid disputed questions of fact the best course of action available to the petitioner, if so advised, is to file a Civil Suit for establishing its right of ownership to sand and aggregate forming the subject matter of this Petition and for obtaining consequential relief(s).

The disposal of the suit may take a long time. Sand and aggregate in the meanwhile cannot be allowed to lie at the premises in question in a state of disuse, especially so when respondents No. 1 and 2 claim and assert that these are required by the State Government for being used in the area in question for its construction activities. The contention is well founded because this Court cannot fail to take judicial notice of the fact that the premises where the sand and aggregate is presently lying is

indeed very remote and construction activity which might be going on or which might be undertaken in the same area shall co-relate harmoniously, resulting in optimum benefit to the State Government. Rather than transporting the sand and aggregate from far-flung, distant places, it shall be more convenient for the State Government to use sand and aggregate lying there itself. We therefore, as an interim measure, permit respondents No.1 and 2 to lift sand and aggregate from the premises in question and use the same for the construction activity of the State Government and its functionaries but subject to the following conditions:-

1. The entire quantity of sand and aggregate shall be duly measured in terms of cubic metres. The measurement process shall be undertaken and completed by respondents No. 1 and 2 in the presence of a representative each of the petitioner and respondent No.3 in four weeks from today.
2. An undertaking shall be filed on behalf of respondent No.1 in this Court within two months from today to the effect that if, in the suit which the petitioner might file with respect to the subject matter of this Writ Petition, judgment is given ultimately against respondents No.1 and 2 and it is held that the sand and aggregate forming the subject matter of this Writ Petition (and the Suit, if filed) is the property of the petitioner, respondents 1 and 2 shall be liable to pay the cost of sand and aggregate to the petitioner alongwith interest thereupon calculated at the rate of 9%

per annum from the date the taking and recording of measurements (in cubic metres) of sand and aggregate are completed.

The Writ Petition is dismissed but with liberty to the petitioner to avail of the aforesaid alternate remedy.

CMP No.1036 of 2006.

In view of the order passed in the main matter, interim order dated 17th August, 2006 is vacated and the application is dismissed.

CMPs No.601 of 2006 & 1164 of 2006.

In view of the order passed in the main matter, both the applications shall stand dismissed as having become infructuous.

(V.K. Gupta), C.J.

October 12 ,2007.
(rks)

(Rajiv Sharma), J.